IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WA.No. 1904 of 2003(A)

AGAINST THE JUDGEMENT IN OP.2596/2003 Dated 07/10/2003

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APPELLANT: 3RD RESPONDENT:

F.A.C.T. SERVICE CO-OPERATIVE SOCIETY LTD., NO.2700, UDYOGAMANDAL, ERNAKULAM DISTRICT, REPRESENTED BY ITS PRESIDENT.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA KRISHNAMOORTHY
SMT.PRIYA MANJOORAN

RESPONDENTS: PETITIONER & RESPONDENTS 1 & 2:

1. BALAKRISHNA MENON. K., "SOUBHAGYA", PERIYAR NAGAR, P.O.THAIKKATTUKARA, ALUVA, ERNAKULAM.

2. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, ERNAKULAM.

3. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, NORTH PARAVUR, ERNAKULAM.

BY SPL.GOVERNMENT PLEADER FOR CO-OP SOCIEITY
SMT.A.G.ANEETHA
SRI.P.N.MOHANAN
SRI.V.SUMESH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1904 of 2003

Dated, this the 13th day of August, 2007

JUDGMENT

K.T.Sankaran, J.

The third respondent in O.P.No.2596 of 2003 is the appellant. The writ petition was filed by the first respondent praying for a writ of mandamus directing respondents 2 and 3, namely the Joint Registrar of Co-operative Societies and the Assistant Registrar of Co-operative Societies to take action under Section 32 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act'). There is a further prayer to issue a direction to the third respondent to give pay revision benefits to the petitioner with effect from 1.4.1999 and also the consequential retirement benefits as directed by the Assistant Registrar in Ext.P3 proceedings. A declaration is also sought by the writ petitioner to the effect that he is entitled to get the benefits of pay revision with effect from 1.4.1999 till his retirement on 30.11.2000 and consequential retirement benefits in accordance with law.

(2) The petitioner in the writ petition was an employee of F.A.C.T. Service Co-operative Society Limited, a society having membership of the members of the Fertilizers and Chemicals Travancore Limited. The petitioner retired from service on 30.11.2000. Prior to the retirement of the petitioner, by a Government order dated 22.3.2000 the pay revision was effected with effect from 1.4.1999.

(3) Complaining that the benefits of the pay revision were not extended to the writ petitioner, he submitted Ext.P2 representation to the Joint Registrar of Co-operative Societies and Assistant Registrar of Co-operative Societies .

The Assistant Registrar passed Ext.P3 order dated 18.7.2001 directing the society to pay the service benefits to the writ petitioner on the basis of the pay revision. Ext.P4 is a communication dated 27.6.2002 issued by the Joint Registrar of Co-operative Societies to the writ petitioner intimating the decision taken by the Assistant Registrar. The writ petition was filed on the allegation that the society failed to comply with the directions issued by the Assistant Registrar.

(4) The society raised a contention that it was incurring heavy loss in the previous years with an accumulated loss of approximately Rs.7.5 lakhs. It was also pointed out that on account of the financial crisis, the retirement vacancies were not filled up and the strength of the employees had come down from 21 to 6. During the period from 1.4.1999 to 1.11.2001 five employees including the writ petitioner retired from service. It was also contended by the society that it had filed an application before the Registrar of Co-operative Societies to exempt the society from implementing the pay revision.

(5) The learned Single Judge, as per judgment dated 7th October, 2003, directed the third respondent society to implement Ext.P3 order passed by the Assistant Registrar and to pay the arrears of salary due to the writ petitioner within three months. The contention of the society that it had moved an application before the Registrar of Co-operative Societies was noticed by the learned Single Judge and it was held thus:

> "A Society is bound to grant the pay scale as provided under Appendix III of the Kerala Co-operative Societies Rules by virtue of the provisions of Rule 188 of the Kerala Co-operative Societies Rules, unless the sanction of the Registrar is obtained to deviate from it. In the case on hand, the 3rd respondent does not have a case that they have obtained sanction from the Registrar. They submit, only a representation is made on 4.3.2003 and the same is pending

consideration before the Registrar."

(6) Sri. A.K.Jayasankar Nambiar, the learned counsel appearing for the appellant, submitted that the learned Single Judge was not justified in granting the reliefs as now granted. He submits that an employee of a co-operative society could only raise a dispute under Section 69 of the Act and he cannot approach the Assistant Registrar or Joint Registrar with representations like Ext.P2 .

(7) Sri.P.N.Mohanan, learned counsel appearing for the first respondent employee contended that the Assistant Registrar could invoke his powers under Sections 66 and 66A of the Act and could issue an order like Ext.P3.

(8) Section 69 of the Act provides that notwithstanding anything contained in any law for the time being in force, if a dispute as mentioned in the Section arises, such dispute shall be referred to the Co-operative Arbitration Court constituted under Section 70A of the Act, in the case of non-monetary disputes and to the Registrar in the case of monetary disputes. Section 69 provides that the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Clause (d) of sub-section (2) of Section 69 of the Act provides that any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of Section 80, including their promotion and inter-se seniority shall also be deemed to be a dispute for the purpose of sub-section (1) of Section 69 of the Act. Section 66 of the Act provides that the Registrar shall supervise or cause to be supervised by a person authorised by him by general or special order in writing in this behalf,

the working of every society as frequently as he may consider necessary. It includes the inspection of books of the society. Under sub-section (4) of Section 66, the Registrar shall have access to the books, records and accounts of the society and may summon any person in possession of or responsible for the custody of any such books, records and accounts to produce the same for inspection. Under sub-section (5) of Section 66, the Registrar may by an order in writing direct the society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order. The learned counsel for the writ petitioner submits that under sub-section (5) of Section 66 the Registrar could pass an order like Ext.P3. Mr.P.N.Mohanan also submits that the Registrar includes any person on whom all or any of the powers of the Registrar under the Act are conferred, as defined in Section 2(p) of the Act. Section 66A of the Act provides that subject to the provisions contained in the Act and the Rules made thereunder, the Registrar may issue general directions and guidelines to the Co-operative Societies in furtherance of the purposes of the Act.

(9) A specific provision, namely Section 69, is made in the Act for resolving disputes between a society and its employees. Section 69 of the Act also excludes jurisdiction of any court or authority to deal with a dispute as is referred to in that section. The powers of superintendence under Section 66 or the power to issue general directions and guidelines under Section 66A do not override Section 69. The scope of Section 69 on the one hand and that of Sections 66 and 66A on the other, are distinct and different. A dispute which is to be resolved under Section 69 of the Act cannot be the subject matter of the exercise of jurisdiction under Sections 66 and 66A. Section 69 excludes the

jurisdiction of court or other authority in respect of the disputes coming within the purview of the section. Such 'other authority' referred to in Section 69 would take in the authority empowered to exercise jurisdiction under Section 66 or Section 66A of the Act. We are of the view that the remedy of the writ petitioner was not to move the Assistant Registrar by a representation, but to raise a dispute under Section 69 of the Act. The Assistant Registrar had no jurisdiction to dispose of such a representation considering it as a dispute, nor to issue a direction to pay a particular amount as salary or allowances or other service benefits to an employee of a society. Such orders could be issued only by an authority under Section 69 of the Act.

(10) In view of the above position, we are of the view that the learned Single Judge was not justified in directing the society to disburse the arrears of salary and other service benefits to the writ petitioner as is done in the impugned judgment. The judgment of the learned Single Judge is, therefore, set aside and the writ petition is dismissed.

Writ appeal is allowed as indicated above.

Consequently, I.A.No.607 of 2005 is also dismissed.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns